

AMENDED IN SENATE MARCH 21, 2017

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AMENDED IN SENATE FEBRUARY 21, 2017

SENATE BILL

No. 35

Introduced by Senator Wiener
(Principal coauthors: Senators Allen and coauthor: Senator Atkins)
(Coauthor: Senator Allen)

December 5, 2016

An act to amend Sections 65400 and 65582.1 of, and to add Section 65913.4 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 35, as amended, Wiener. Planning and zoning: affordable housing: streamlined approval process.

(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. The Planning and Zoning Law requires a planning agency, after a legislative body has adopted all or part of a general plan, to provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the general plan and progress in meeting the community's share of regional housing needs.

This bill would require the planning agency to include in its annual report specified information regarding units of ~~housing~~ *housing*, *including rental housing and housing designated for homeownership*, that have completed construction. The bill would also require the Department of Housing and Community Development to post an annual

report submitted pursuant to the requirement described above on its Internet Web site, as provided.

(2) Existing law requires an attached housing development to be a permitted use, not subject to a conditional use permit, on any parcel zoned for multifamily housing if at least certain percentages of the units are available at affordable housing costs to very low income, lower income, and moderate-income households for at least 30 years and if the project meets specified conditions relating to location and being subject to a discretionary decision other than a conditional use permit. Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing.

This bill would require an accessory dwelling unit development or a multifamily housing development that satisfies specified planning objective standards to be subject to a streamlined, ministerial approval process, as provided, and to not be subject to a conditional use permit. *The bill would limit the authority of a local government to impose parking standards or requirements on a streamlined development approved pursuant to these provisions, as provided.* The bill would provide that if a local government approves a project pursuant to that process, that approval will not expire if that project includes investment in housing affordability, and would otherwise provide that the approval of a project expire automatically after 3 years, unless that project qualifies for a one-time, one-year extension of that approval.

(3) The bill would make findings that ensuring access to affordable housing is a matter of statewide concern and declare that its provisions would apply to all cities and counties, including a charter city, a charter county, or a charter city and county.

(4) By imposing new duties upon local agencies with respect to the streamlined approval process and reporting requirement described above, this bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 65400 of the Government Code is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). Before and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government's compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.

The report may include the number of units that have been substantially rehabilitated, converted from nonaffordable to

1 affordable by acquisition, and preserved consistent with the
2 standards set forth in paragraph (2) of subdivision (c) of Section
3 65583.1. The report shall document how the units meet the
4 standards set forth in that subdivision.

5 (C) The degree to which its approved general plan complies
6 with the guidelines developed and adopted pursuant to Section
7 65040.2 and the date of the last revision to the general plan.

8 (D) The number of units of ~~housing~~ *housing, including both*
9 *rental housing and housing designated for homeownership*, that
10 have completed construction thus far in the housing element cycle,
11 and the income category, by area median income category, that
12 each unit of ~~housing~~ *housing, including both rental housing and*
13 *housing designated for homeownership*, satisfies. *That report shall,*
14 *for each income category described in this subparagraph,*
15 *distinguish between the number of rental housing units that satisfy*
16 *each income category and the number of units that are housing*
17 *designated for homeownership that satisfy each income category.*

18 (E) The Department of Housing and Community Development
19 shall post a report submitted pursuant to this paragraph on its
20 Internet Web site within a reasonable time of receiving the report.

21 (b) If a court finds, upon a motion to that effect, that a city,
22 county, or city and county failed to submit, within 60 days of the
23 deadline established in this section, the housing element portion
24 of the report required pursuant to subparagraph (B) of paragraph
25 (2) of subdivision (a) that substantially complies with the
26 requirements of this section, the court shall issue an order or
27 judgment compelling compliance with this section within 60 days.
28 If the city, county, or city and county fails to comply with the
29 court's order within 60 days, the plaintiff or petitioner may move
30 for sanctions, and the court may, upon that motion, grant
31 appropriate sanctions. The court shall retain jurisdiction to ensure
32 that its order or judgment is carried out. If the court determines
33 that its order or judgment is not carried out within 60 days, the
34 court may issue further orders as provided by law to ensure that
35 the purposes and policies of this section are fulfilled. This
36 subdivision applies to proceedings initiated on or after the first
37 day of October following the adoption of forms and definitions by
38 the Department of Housing and Community Development pursuant
39 to paragraph (2) of subdivision (a), but no sooner than six months
40 following that adoption.

1 SEC. 2. Section 65582.1 of the Government Code is amended
2 to read:

3 65582.1. The Legislature finds and declares that it has provided
4 reforms and incentives to facilitate and expedite the construction
5 of affordable housing. Those reforms and incentives can be found
6 in the following provisions:

7 (a) Housing element law (Article 10.6 (commencing with
8 Section 65580) of Chapter 3).

9 (b) Extension of statute of limitations in actions challenging the
10 housing element and brought in support of affordable housing
11 (subdivision (d) of Section 65009).

12 (c) Restrictions on disapproval of housing developments
13 (Section 65589.5).

14 (d) Priority for affordable housing in the allocation of water and
15 sewer hookups (Section 65589.7).

16 (e) Least cost zoning law (Section 65913.1).

17 (f) Density bonus law (Section 65915).

18 (g) Accessory dwelling units (Sections 65852.150 and 65852.2).

19 (h) By-right housing, in which certain multifamily housing are
20 designated a permitted use (Section 65589.4).

21 (i) No-net-loss-in zoning density law limiting downzonings and
22 density reductions (Section 65863).

23 (j) Requiring persons who sue to halt affordable housing to pay
24 attorney fees (Section 65914) or post a bond (Section 529.2 of the
25 Code of Civil Procedure).

26 (k) Reduced time for action on affordable housing applications
27 under the approval of development permits process (Article 5
28 (commencing with Section 65950) of Chapter 4.5).

29 (l) Limiting moratoriums on multifamily housing (Section
30 65858).

31 (m) Prohibiting discrimination against affordable housing
32 (Section 65008).

33 (n) California Fair Employment and Housing Act (Part 2.8
34 (commencing with Section 12900) of Division 3).

35 (o) Community redevelopment law (Part 1 (commencing with
36 Section 33000) of Division 24 of the Health and Safety Code, and
37 in particular Sections 33334.2 and 33413).

38 (p) Streamlining housing approvals during a housing shortage
39 (Section 65913.4).

SEC. 3. Section 65913.4 is added to the Government Code, to read:

65913.4. (a) A development shall be subject to the streamlined, ministerial approval process provided by subdivision (b) and shall not be subject to a conditional use permit if it satisfies all of the following objective planning standards:

(1) The development is an accessory dwelling unit development or a multifamily housing development that contains two or more residential units.

(2) The development is located on a site that satisfies both of the following:

(A) Is an urban infill site as defined by Section 21061.3 of the Public Resources Code.

(B) Is a site zoned for residential use or residential mixed use development with at least two-thirds of the square footage designated for residential use.

(3) If the development contains units that are subsidized, the development applicant or development proponent already has recorded, or is required by law to record, a land use restriction that is:

(A) Fifty-five years for subsidized units that are rented.

(B) Forty-five years for subsidized units that are owned.

(4) The development satisfies both of the following:

(A) Is located in a locality that, according to its last production report to the Department of Housing and Community Development, completed construction of fewer units of housing by income category than was required for the regional housing needs assessment cycle for that reporting ~~period~~. *period, or has not submitted an annual housing element report to the Department of Housing and Community Development pursuant to paragraph (2) of subdivision (a) of Section 65400 for at least two consecutive years before the development submitted an application for approval under this section.*

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on either of the following:

(i) ~~The locality's locality did not submit its latest~~ production report to the Department of Housing and Community Development by the time period required by Section 65400, or that report reflects that there were fewer units of above moderate-income housing

constructed than was required for the regional housing needs assessment cycle for that year, and the project seeking approval dedicates a minimum of 10 percent of the total number of units to housing affordable to households making below 80 percent of the area median income, unless the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, in which case that zoning ordinance applies.

(ii) *The locality's locality did not submit its latest production report to the Department of Housing and Community Development by the time period required by Section 65400, or that report reflects that there were fewer units of housing affordable to households making below 80 percent of the area median income constructed than was required for the regional housing needs assessment cycle for that year, and the project seeking approval dedicates the majority of the total number of units to housing affordable to households making below 80 percent of the area median income, unless the locality has adopted a local ordinance that requires that greater than the majority of the units be dedicated to housing affordable to households making below 80 percent of the area median income, in which case that ordinance applies.*

(5) The development is consistent with objective zoning ~~standards~~ *standards, including the Density Bonus Law in Section 65915*, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, “objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official.

(6) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of ~~Conservation~~. *Conservation, or land zoned or designated for agricultural*

1 *protection or preservation by a local ballot measure that was*
2 *approved by the voters of that jurisdiction.*

3 (C) Wetlands, as defined in Section 328.3 of Title 33 of the
4 Code of Federal Regulations.

5 (D) Within a very high fire hazard severity zone, as determined
6 by the Department of Forestry and Fire Protection pursuant to
7 Section 51178, or within a high or very high fire hazard severity
8 zone as indicated on maps adopted by the Department of Forestry
9 and Fire Protection pursuant to Section 4202 of the Public
10 Resources Code. This subparagraph does not apply to sites
11 excluded from the specified hazard zones by a local agency,
12 pursuant to subdivision (b) of Section 51179, or sites that have
13 adopted sufficient fire hazard mitigation measures as may be
14 determined by their local agency with land use authority.

15 (E) A hazardous waste site that is listed pursuant to Section
16 65962.5 or a hazardous waste site designated by the Department
17 of Toxic Substances Control pursuant to Section 25356 of the
18 Health and Safety Code, unless the Department of Toxic
19 Substances Control has cleared the site for residential use or
20 residential mixed uses.

21 (F) Within a delineated earthquake fault zone as determined by
22 the State Geologist in any official maps published by the State
23 Geologist.

24 (G) Within a flood plain as determined by maps promulgated
25 by the Federal Emergency Management Agency, unless the
26 development has been issued a flood plain development permit
27 pursuant to Part 59 (commencing with Section 59.1) and Part 60
28 (commencing with Section 60.1) of Subchapter B of Chapter I of
29 Title 44 of the Code of Federal Regulations.

30 (H) Within a floodway as determined by maps promulgated by
31 the Federal Emergency Management Agency, unless the
32 development has received a no rise certification in accordance
33 with paragraph (3) of subdivision (d) of Section 60.3 of Title 44
34 of the Code of Federal Regulations.

35 (7) The development does not require the demolition of either
36 of the following:

37 (A) Housing that is subject to rent control, housing that is subject
38 to deed restrictions, or any housing that has been occupied by
39 residents within the past 10 ~~years~~: *years by tenants*.

1 (B) A historic structure that was placed on a national, state, or
2 local historic register before December 31, 2016. *register.*

3 (8) The development proponent has certified that either of the
4 following is true:

5 (A) The project is a public work for purposes of Chapter 1
6 (commencing with Section 1720) of Part 7 of Division 2 of the
7 Labor Code.

8 (B) If the project is not a public work, that all construction
9 workers employed in the execution of the project will be paid at
10 least the general prevailing rate of per diem wages for the type of
11 work and geographic area, as determined by the Director of
12 Industrial Relations pursuant to Sections 1773 and 1773.9 of the
13 Labor Code. If the development is subject to this subparagraph,
14 then all of the following shall apply:

15 (i) The development proponent shall ensure that the prevailing
16 wage requirement is included in all contracts for the performance
17 of the work.

18 (ii) Contractors and subcontractors shall pay to all construction
19 workers employed in the execution of the work at least the general
20 prevailing rate of per diem wages.

21 (iii) Except as provided in clause (iv), the obligation of the
22 contractors and subcontractors to pay prevailing wages may be
23 enforced by the Labor Commissioner through the issuance of a
24 civil wage and penalty assessment pursuant to Section 1741 of the
25 Labor Code, which may be reviewed pursuant to Section 1742 of
26 the Labor Code, within 18 months after the completion of the
27 project, or by an underpaid worker through an administrative
28 complaint or civil action. If a civil wage and penalty assessment
29 is issued, the contractor, subcontractor, and surety on a bond or
30 bonds issued to secure the payment of wages covered by the
31 assessment shall be liable for liquidated damages pursuant to
32 Section 1742.1 of the Labor Code.

33 (iv) Clause (iii) shall not apply if all contractors and
34 subcontractors performing work on the project are subject to a
35 project labor agreement that requires the payment of prevailing
36 wages to all construction workers employed in the execution of
37 the project and provides for enforcement of that obligation through
38 an arbitration procedure. For purposes of this clause, “project labor
39 agreement” has the same meaning as set forth in paragraph (1) of
40 subdivision (b) of Section 2500 of the Public Contract Code.

(v) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirements of paragraph (2) of subdivision (c) of Section 1773.1 of the Labor Code do not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(9) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(b) (1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

(c) Any design review of the development may be conducted by the local government's supervising body for design review, including a planning department or city council, and shall be completed as follows and shall not in any way inhibit, chill, or

1 preclude the ministerial approval provided by this section or its
2 effect, as applicable:

3 (1) Within 90 days of submittal of the development to the local
4 government pursuant to this section if the development contains
5 150 or fewer housing units.

6 (2) Within 180 days of submittal of the development to the local
7 government pursuant to this section if the development contains
8 more than 150 housing units.

9 ~~(d) A development approved pursuant to this section that is~~
10 ~~located within one-quarter mile of a major transit stop shall not be~~
11 ~~subject to any local or state parking minimum requirements. For~~
12 ~~purposes of this subdivision, “major transit stop” has the same~~
13 ~~meaning as defined in Section 21064.3 of the Public Resources~~
14 ~~Code.~~

15 *(d) (1) Notwithstanding any other law, a local government,*
16 *whether or not it has adopted an ordinance governing parking*
17 *requirements in multifamily developments, shall not impose parking*
18 *standards for a streamlined development in any of the following*
19 *instances:*

20 *(A) The development is located within one-half mile of public*
21 *transit.*

22 *(B) The development is located within an architecturally and*
23 *historically significant historic district.*

24 *(C) When on-street parking permits are required but not offered*
25 *to the occupants of the development.*

26 *(D) When there is a car share vehicle located within one block*
27 *of the development.*

28 *(2) Parking requirements for streamlined developments shall*
29 *not exceed one parking space per unit. This paragraph shall not*
30 *apply to accessory dwelling units or developments described in*
31 *paragraph (1).*

32 *(3) A local government shall comply with the requirements of*
33 *Section 65852.2 when establishing parking requirements for a*
34 *streamlined development that is an accessory dwelling unit.*

35 (e) (1) If a local government approves a development pursuant
36 to this section, that approval shall not expire if the project includes
37 public investment in housing affordability, beyond tax credits,
38 where the majority of the units are affordable to households making
39 below 80 percent of the area median income.

(2) If a local government approves a development pursuant to this section and the project does not include a majority of the units affordable to households making below 80 percent of the area median income, that approval shall automatically expire after three years except that a project may receive a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready.

(f) For purposes of this section, “locality” or “local government” means a city, including a charter city, a county, or a city and county, including a charter city and county.

(g) For purposes of this section, “production report” means the information reported pursuant to subparagraph (D) of paragraph (2) of subdivision (a) of Section 65400.

SEC. 4. The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern, and not a municipal affair. Therefore, the changes made by this act are applicable to a charter city, a charter county, and a charter city and county.

SEC. 5. Each provision of this measure is a material and integral part of this measure, and the provisions of this measure are not severable. If any provision of this measure or its application is held invalid, this entire measure shall be null and void.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.